

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2157-02
Bill No.: HB 876
Subject: Department of Corrections; State Employees
Type: Original
Date: March 24, 2009

Bill Summary: The proposal prohibits the state from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour work day or his or her regularly assigned hours of work.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$957,039 to Unknown)	(\$957,039 to Unknown)	(\$957,039 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$957,039 to Unknown)	(\$957,039 to Unknown)	(\$957,039 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Federal	(\$337,500 to Unknown)	(\$337,500 to Unknown)	(\$337,500 to Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$337,500 to Unknown)	(\$337,500 to Unknown)	(\$337,500 to Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration – Division of Budget and Planning, – Administrative Hearing Commission, Department of Economic Development, Department of Elementary and Secondary Education, Department of Transportation, Department of Insurance, Financial Institutions, and Professional Registration, Department of Natural Resources, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Public Safety – Capitol Police, – Office of the Adjutant General, – Missouri Gaming Commission, – State Emergency Management Agency, – Division of Alcohol and Tobacco Control, Office of the Governor, Missouri Consolidated Health Care Plan, Missouri Ethics Commission, Office of the Lieutenant Governor, Missouri House of Representatives, Public Service Commission, Office of the State Auditor, Missouri Senate, Office of the State Public Defender, and the Office of the State Treasurer** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed within existing resources.

Officials from the **Office of Administration – Division of Personnel** assume restricting an employer from the ability to reduce overtime expenses by requiring employees to use comp time will have an impact. Due to the number of variables involved, a fiscal impact is not provided.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Mental Health (DMH)** assume the proposal removes some flexibility for situations where employees may necessarily be working longer shifts. There would be no impact to consumers, but there would be some fiscal impact to DMH. Although the actual fiscal impact is unknown, it is safe to say the impact to scheduling flexibility would result in an increase in overtime costs incurred by DMH. In FY08 the total overtime paid by DMH was \$16,890,783. Using a conservative estimate of an increase of 5%, the fiscal impact would be an additional \$844,539 in overtime costs.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume this proposal prohibits the state from requiring a nonexempt state employee from taking time off during any week the employee works longer than an eight-hour work day or his or her regularly assigned hours of work.

Passage of this bill would have a significant fiscal impact on the Department of Corrections.

DOC currently encourages employees required to work beyond their regular work shift to flex their standard work week to alleviate the state overtime balance. The Federal Labor Standard mandates that non-exempt employees who physically work over 40 hours be compensated at the premium rate (1½ times their regular pay rate). The FLSA does not mandate that a worker be compensated for hours worked beyond an eight-hour work day. It is currently in compliance with the Department of Labor to flex within the week so overtime doesn't accrue to the premium rate.

Prohibiting the DOC from flexing the time off within the given week it is earned will greatly increase the DOC's current overtime balance and subsequent outlay of general revenue funds. The resulting overtime accrual would have to be paid off rather than managed as it currently is and although the future impact cannot be predicted, the potential exists for a significant fiscal impact, potentially in the millions of dollars per each year.

Officials from the **Department of Revenue (DOR)** assume the legislation could have a fiscal impact on the DOR:

Personal Tax:

This would increase Taxation's personal services costs.

Collections and Taxation:

Personnel who work the phone and field may run over eight hours in a day because they are working with taxpayers. Also, the field staff who works the different fairs, including the State, Ozark, and Southeast Missouri Fairs, adjust their work week so the DNR does not incur a high number of compensatory hours for the offices with a small number of staff.

ASSUMPTION (continued)

Business Tax:

The proposal appears to pose a problem when the employee would exceed the eight hour workday and there is no opportunity to correct the issue during the same eight hour work period. This could be problem if the employee is caught unexpected on a phone call and/or walk-in at the end of the day. This forces an overtime situation which seems to be inconsistent with the Fair Labor Standards Act (FLSA) which is defined under a work week basis. In this situation, this is providing no means for the employer to adjust the work schedule within the same work week to ensure DOR is not in an overtime situation as defined by FLSA.

Excise Tax:

This poses a problem in cases where an employee works more than eight hours in a day due to being caught on a telephone call or a walk-in at the end of the day. This would put them in an overtime situation and there would be no means for the employer to adjust the work schedule within the same work week to ensure DOR is not in an overtime situation.

Officials from DOR did not quantify the potential cost to their department.

Officials from the **Department of Social Services – Human Resource Center (DOS)** assume they try to make every effort to be fiscally responsible and minimize the overtime financial liability. This legislation would prevent DOS from minimizing overtime liability and would result in increased overtime liability. In addition, it would require that the DOS give time and a half (federal compensatory time) in cases where the agency could have compensated the employee on a straight time basis if the time was flexed during the workweek. Section 105.935 is limited to direct client care of custody staff in facilities; however, there would be a significant impact to the Division of Youth Services (DYS).

When an employee works over their regularly scheduled hours in a workweek, DOS requires supervisors to flex the employee's work schedule so that overtime liability is not incurred. For example, if an employee works three hours over on Monday, the supervisor would attempt to schedule the employee off three hours later in the week to offset this. Flexed time is not recorded in the SAMII payroll; therefore, it is not possible to specify cost impact. However, it is anticipated that this would be a significant cost to DYS, and would impact the General Revenue, Federal, and Local Funds.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)** state in 2008, under current rules, MSHP employees accumulated approximately \$7.5 million worth of overtime. It is assumed that this legislation could increase this figure. However, there is no way to predict how many additional hours would be accumulated, because even though employers could no longer mandate that employees take the time off during the same week it is earned, employees could still choose to take the time off during that week before it posts to their comp time balances. If they voluntarily take the time off, this legislation would have no fiscal impact. MSHP believes, though, it is likely that some employees will not choose to immediately take the time off and there will be at least somewhat of an increase. There is no way to estimate this figure which is why the MSHP assumes an unknown impact.

Officials from the **Department of Public Safety – Missouri Veterans Commission (MVC)** assume, based on last year's cost, this legislation could increase MVC state and federal comp time liability by 25 to 35 percent, or \$450,000 to \$630,000 annually. MVC paid \$1.8 million in state and federal comp time last year.

Oversight assumes, based upon information obtained from the FY 2010 Department of Public Safety Budget Request, the costs to the Missouri Veterans Commission would be 25% General Revenue and 75% Federal Funds.

Officials from the **Department of Conservation (MDC)** assume the proposed legislation would have fiscal impact on MDC funds if it requires nonexempt state employees not to adjust their work schedule within a work week in order to avoid the payment of overtime. The exact amount of impact is unknown, but could exceed \$100,000 annually.

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

ASSUMPTION (continued)

Oversight assumes, pursuant to Section 105.935.7, RSMo, this section is applicable to employees who are employed in nonexempt positions providing direct client care or custody in facilities operating on a twenty-four-hour seven-day-a-week basis in the Department of Corrections, Department of Mental Health, Division of Youth Services of the Department of Social Services, and the Veterans Commission of the Department of Public Safety. Therefore, Oversight assumes no fiscal impact to all other state agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Overtime costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Department of Mental Health</u>			
Overtime costs	(\$844,539 to Unknown)	(\$844,539 to Unknown)	(\$844,539 to Unknown)
<u>Costs – Department of Social Services</u>			
Overtime costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Missouri Veterans Commission</u>			
Overtime costs	<u>(\$112,500 to \$157,500)</u>	<u>(\$112,500 to \$157,500)</u>	<u>(\$112,500 to \$157,500)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$957,039 to Unknown)</u>	<u>(\$957,039 to Unknown)</u>	<u>(\$957,039 to Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2010 (10 Mo.)	FY 2011	FY 2012
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FEDERAL FUNDS

<u>Costs – Department of Social Services</u> Overtime costs	(Unknown)	(Unknown)	(Unknown)
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<u>Costs – Missouri Veterans Commission</u> Overtime costs	<u>(\$337,500 to \$472,500)</u>	<u>(\$337,500 to \$472,500)</u>	<u>(\$337,500 to \$472,500)</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$337,500 to Unknown)</u>	<u>(\$337,500 to Unknown)</u>	<u>(\$337,500 to Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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LOCAL GOVERNMENT

<u>Costs – Local Government</u> Overtime costs for direct client care or custody	(Unknown)	(Unknown)	(Unknown)
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation prohibits an employer from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour workday or the employee's regularly assigned hours of work. This section is applicable to employees who are employed in nonexempt positions providing direct client care or custody in facilities operating on a twenty-four-hour seven-day-a-week basis in the Department of Corrections, Department of Mental Health, Division of Youth Services of the Department of Social Services, and the Veterans Commission of the Department of Public Safety.

This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Agriculture
Coordinating Board for Higher Education
Office of Administration

- Division of Personnel
- Division of Budget and Planning
- Administrative Hearing Commission

Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services

SOURCES OF INFORMATION (continued)

Department of Public Safety

- Missouri State Highway Patrol
- Capitol Police
- Office of the Adjutant General
- Missouri Gaming Commission
- State Emergency Management Agency
- Division of Alcohol and Tobacco Control
- Missouri Veterans Commission

Office of the Governor

Missouri Consolidated Health Care Plan

Department of Conservation

Missouri Ethics Commission

Office of the Lieutenant Governor

Missouri House of Representatives

Office of Prosecution Services

Public Service Commission

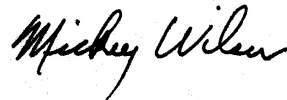
Office of the State Auditor

Missouri Senate

Office of the Secretary of State

Office of the State Public Defender

Office of the State Treasurer



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Director
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